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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/699,430	10/31/2003	Naysen J. Robertson	200314783-1	3276

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EXAMINER

WEINSTEIN, LEONARD J

ART UNIT PAPER NUMBER

3746

DATE MAILED: 12/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/699,430

Applicant(s)

ROBERTSON ET AL.

Examiner

Leonard J. Weinstein

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 31 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☒ Claim(s) 1-19 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 07/05/2005.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Specification***

1. The disclosure is objected to because of the following informalities: on page 14 elements 506 and 507 are both referred to as the failed fan motor transport belt, and in addition element 503 is referred to as a pre-existing fan motor and a replacement fan motor.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 4, 11, and 13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
4. Claim 11 recites the limitation of a fan motor assembly comprised of a "fan motor receptacle" in line 3. There is insufficient antecedent basis for this limitation in the claim.
5. The term "substantially different" in claims 4 and 13 is a relative term which renders the claim indefinite. The term "substantially different power characteristics" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. The difference between the power characteristics of a first, second, and further a plurality of motors cannot be ascertained.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1-19 are rejected under 35 U.S.C. 102(a) and in the alternative 102(e) as being anticipated by Aldridge et al 6,791,209. Aldridge et al. '209 discloses the invention substantially as claimed including: a fan motor assembly with integrated redundant availability Fig. 4 comprising a fan motor subassembly 410 comprising a plurality, also constituting a first 175,180, and 470 and second 260, 270 and 340 via 350, of replaceable fan motors with a fan motor selector mechanism 450 coupled to the fan motor subassembly, the fan motor selector mechanism configured to selectively engage and dispose one of said plurality of replaceable fan motors to a fan in an orientation to drive the fan, and a control unit coupled to the fan motor selector mechanism, and configured to control the fan motor selector mechanism such that a first of said plurality of replaceable fan motors mechanically powers the fan while a second of said plurality of replaceable fan motors can be dynamically removed from the fan motor subassembly (col. 4 ll. 62-65). Further Aldridge et al. '209 discloses the second fan motor 240, 250 and 340, engaged or coupled to the fan and causing the fan motor subassembly to move

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from a first position to a second position; a plurality of fan motors, constituting first and second motors as stated above, that comprise a redundant power source (col. 4 ll. 4-10); a fan motor performance monitoring unit 450 configured to determine the performance characteristics of the engaged replaceable or removably coupled fan motor (col. 4 ll. 23-42). Aldridge et al. '209 further discloses a tachometer, where 350 and 470 are the same as element 205 (col. 2 ll. 65-67), configured to determine the rotational speed at which the first of said plurality of replaceable fan motors, as stated above, causes the fan 140 to rotate, and a current measuring device configured to determine the amount of current used by the first of said plurality of replaceable fan motors (col. 4 ll. 27-31), and having a comparator configured to compare a measured performance characteristic of the first of said plurality of replaceable fan motors with a specified fan motor performance requirement (col. 4 ll. 27-31). Further Aldridge et al. '209 discloses first and second fan motors which exhibit different power characteristics (col. 4 ll. 42-46), and a programmable control unit capable of being programmed to selectively engage or couple one of said plurality, first or second as stated above, of replaceable fan motors (col. 4 ll. 31-34).

Aldridge et al. '209 teaches the method as substantially claimed including a method for providing redundant availability in a fan system comprising coupling a first replaceable fan motor and a second replaceable fan motor in a fan motor subassembly disposed in a first orientation for driving a fan with the first fan motor (col. 4 ll. 10-14), monitoring a performance characteristic of the first fan motor, comparing a measured performance characteristic of the first fan motor with a specified fan motor performance requirement, and provided the measured performance characteristic of the first fan motor does not meet a specified fan motor performance requirement, automatically disposing the fan motor subassembly in a second

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orientation for mechanically driving the fan with the second fan motor while simultaneously disposing the first replaceable fan motor (col. 4 ll. 19-22) in a position wherein it can be removed from the subassembly (col. 4 ll. 60-65). Further Aldridge et. al discloses the method as stated above and using the second replaceable fan motor to drive the fan motor subassembly to a second orientation (col. 4 ll. 19-22); monitoring of the performance characteristic of the first fan motor with a current measuring device to determine the amount of current used by the first fan motor (col. 4 ll. 27-31); and programming the control unit to conform to a logic scheme which defines motor engagement rules that are based upon monitoring sensor input (col. 4 ll. 31-42).

### ***Double Patenting***

8. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

Claims 1-19 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 1-19 of prior U.S. Patent No. 6,956,344. This is a double patenting rejection.

### ***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure and are cited on form 892 herewith.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leonard J. Weinstein whose telephone number is 571-272-9961. The examiner can normally be reached on Monday - Thursday 7:00 - 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ehud Gartenberg can be reached on 571-272-4828. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



LJW

11/21/2006

EHUD GARTENBERG  
SUPERVISORY PATENT EXAMINER

